



ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1503 and 1552

[EPA-HQ-OARM-2015-0662; FRL 9943-61-OARM]

Environmental Protection Agency Acquisition Regulation; Improper Business Practices and Personal Conflicts of Interest, Solicitation Provisions and Contract Clauses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a final rule to make administrative changes to the Environmental Protection Agency Acquisition Regulation (EPAAR). EPA does not anticipate any adverse comments.

DATES: This rule is effective on [insert date 60 days after date of publication in the Federal Register] without further action, unless EPA receives adverse comment by [insert date 30 days after date of publication in the Federal Register]. If EPA receives adverse comment, a timely withdrawal will be published in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OARM-2015-0662, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment

and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Julianne Odend'hal, Policy, Training, and Oversight Division, Acquisition Policy and Training Service Center (3802R), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington DC 20460; telephone number: (202) 564-5218; email address: odend'hal.julianne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why is EPA Using a Direct Final Rule?

EPA is publishing this rule without a prior proposed rule because EPA views this as a noncontroversial action and anticipates no adverse comment. EPAAR parts 1503 and 1552 are amended to conform to the format of the Federal Acquisition Regulation (FAR) and to correct, clarify and update information. If EPA receives adverse comment, a timely withdrawal will be published in the Federal Register informing the public that the rule will not take effect. Any parties interested in commenting must do so at this time.

II. Does This Action Apply to Me?

The EPAAR applies to contractors who have a contract with the EPA.

III. What Should I Consider as I Prepare My Comments for EPA?

A. Submitting CBI. Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI, and then identify electronically within the disk or

CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

IV. Background

EPAAR parts 1503 and 1552 are amended to conform to the format of the Federal Acquisition Regulation (FAR) and to correct, clarify and update information.

V. Final Rule

This direct final rule makes the following changes: (1) updates the title and clarifies the information in section 1503.101-370 including correcting statute citations; (2) corrects section number “1503.104-5” to read “1503.104-4” and corrects the reference to “FAR 3.104-5” to read “FAR 3.104-4”; (3) removes section 1503.408, *Evaluation of the SF 119*, because the form no longer exists; (4) updates the subpart number and title of “1503.5” including “1503.500-70”, “1503.500-71” and “1503.500-72” to read “1503.10 Contractor Code of Business Ethics and Conduct”, “1503.1002 Policy”, “1503.1003 Requirements”, and “1503.1004 Contract clause” to conform to the FAR, updates the reference to “EPAAR 1503.500-71(b)” to read “EPAAR 1503.1003(b)”; (5) replaces the term “regular employee” with “employee” which is defined at 5 U.S.C. 2505, and replaces the term “special employee” with “special government employee” which is defined at 18 U.S.C. 202 in sections 1503.600-71, 1503.601, and 1552.203-70; and (6) updates the EPA OIG contact information in section 1552.203-71.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action amends EPAAR parts 1503 and 1552 to conform to the format of the Federal Acquisition Regulation (FAR) and to correct, clarify and update information. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this action. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communication between EPA

and Tribal governments, EPA specifically solicits additional comment on this proposed rule from Tribal officials.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, (February 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-

income populations because it does not affect the level of protection provided to human health or the environment.

K. Congressional Review

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 48 CFR Parts 1503 and 1552

Government procurement.

Dated: May 2, 2016.

John R. Bashista,

Director, Office of Acquisition Management.

For the reasons stated in the preamble, 48 CFR parts 1503 and 1552 are amended as set forth below:

1. Revise part 1503 to read as follows:

PART 1503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.

1503.000 Scope of part.

Subpart 1503.1 Safeguards

1503.101-370 Financial conflicts of interest and loss of impartiality.

1503.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

Subpart 1503.6 Contracts with Government Employees or Organizations Owned or Controlled by Them

1503.600-70 Scope of subpart.

1503.600-71 Definitions.

1503.601 Policy.

1503.602 Exceptions.

1503.670 Disclosure provision.

Subpart 1503.9 Whistleblower Protections for Contractor Employees

1503.905 Procedures for investigating complaints.

Subpart 1503.10 Contractor Code of Business Ethics and Conduct

1503.1002 Policy.

1503.1003 Requirements.

1503.1004 Contract clause.

Authority: 5 U.S.C. 301 and 41 U.S.C. 418b.

1503.000 Scope of part.

This part implements FAR part 3, cites EPA regulations on employee responsibilities and conduct, establishes responsibility for reporting violations and related actions, and provides for authorization of exceptions to policy.

Subpart 1503.1—Safeguards

1503.101-370 Financial conflicts of interest and loss of impartiality.

(a) Each EPA employee (including special government employees as defined by 18 U.S.C. 202 and 1503.600-71(b)) engaged in source evaluation and selection is required to abide by and be familiar with the conflict of interest statutes codified in Title 18 of the United States Code, as well as the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635.

(b) Pursuant to the financial conflict of interest statute, 18 U.S.C. 208 and 5 CFR part 2635, subparts D and E, each employee must abide by ethics requirements regarding financial conflict of interest and impartiality in performing official duties. The employee shall inform his or her Deputy Ethics Official and the Source Selection Authority (SSA) in writing if his/her participation in the source evaluation and selection process may raise possible or apparent conflict of interest or impartiality concerns. The employee must cease work on the source evaluation and selection process until the appropriate ethics official makes a determination. Please note that only the Office of General Counsel can direct employees to divest of financial interests or to recommend any waivers of the financial conflict of interest standards.

1503.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a)(1) The Chief of the Contracting Office (CCO) is the designated official to make the decision whether support contractors are used in proposal evaluation (as authorized at FAR 15.305(c) and restricted at FAR 37.203(d)).

(2) The following written certification and agreement shall be obtained from non-Government evaluator prior to the release of any proposal to that evaluator:

“CERTIFICATION ON THE USE AND DISCLOSURE OF PROPOSALS”

RFP #:

Offeror:

1. I hereby certify that to the best of my knowledge and belief, no conflict of interest exists that may diminish my capacity to perform an impartial, technically sound, objective review of this proposal(s) or otherwise result in a biased opinion or unfair competitive advantage.

2. I agree to use any proposal information only for evaluation purposes. I agree not to copy any information from the proposal(s), to use my best effort to safeguard such information physically, and not to disclose the contents of nor release any information relating to the proposal(s) to anyone outside of the evaluation team assembled for this acquisition or individuals designated by the Contracting Officer.

3. I agree to return to the Government all copies of proposals, as well as any abstracts, upon completion of the evaluation.

Name and Organization:

Date of Execution:

(End of certificate)

(b) Information contained in proposals will be protected and disclosed to the extent permitted by law, and in accordance with FAR 3.104-4, 15.207, and Agency procedures at 40 CFR part 2.

Subpart 1503.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

1503.600-70 Scope of subpart.

This subpart implements and supplements FAR subpart 3.6 and sets forth EPA policy and procedures for identifying and dealing with conflicts of interest and improper influence or favoritism in connection with contracts involving current or former EPA employees. This subpart does not apply to agreements with other departments or agencies of the Federal Government, nor to contracts awarded to State or local units of Government.

1503.600-71 Definitions.

(a) *Employee* means an EPA officer and an individual who is appointed in the civil service and engaged in the performance of a Federal function under authority of law or an Executive act. See 5 U.S.C. 2105.

(b) *Special government employee* means an officer or employee of EPA who is retained, designated, appointed or employed to perform, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis. See 18 U.S.C. 202.

1503.601 Policy.

(a) No contract may be awarded without competition to a former employee or special government employee (or to a business concern or other organization owned or substantially owned or controlled by a former employee) whose employment terminated within 365 calendar days before submission of a proposal to EPA.

(b) No contract shall be awarded without competition to a firm which employs, or proposes to employ, a current employee or special government employee, or a former EPA employee or special government employee, whose employment terminated within 365 calendar days before submission of a proposal to EPA, if either of the following conditions exists:

- (1) The current or former EPA employee or special government employee is or was involved in development or negotiating the proposal for the prospective contractor; or
- (2) The current or former EPA employee or special government employee will be involved directly or indirectly in the management, administration, or performance of the contract.

1503.602 Exceptions.

The Assistant Administrator for the Office of Administration and Resources Management may authorize an exception, in writing, to the policy in FAR 3.601 and 1503.601 for the reasons stated in FAR 3.602, if the exception would not involve a violation of 18 U.S.C. 203, 18 U.S.C. 205, 18 U.S.C. 207, 18 U.S.C. 208, the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, or the EPA supplemental regulations at 5 CFR part 6401. The Assistant Administrator shall consult with the Designated Agency Ethics Official before authorizing any exceptions.

1503.670 Disclosure provision.

The Contracting Officer shall insert the provision at 1552.203-70, *Current/Former Agency Employee Involvement Certification*, in all solicitations for sole-source acquisitions.

Subpart 1503.9—Whistleblower Protections for Contractor Employees

1503.905 Procedures for investigating complaints.

The Assistant Administrator for the Office of Administration and Resources Management is designated as the recipient of the written report of findings by the Inspector General. The Assistant Administrator shall ensure that the report of findings is disseminated in accordance with FAR 3.905(c).

Subpart 1503.10—Contractor Code of Business Ethics and Conduct

1503.1002 Policy.

Government contractors must conduct themselves with the highest degree of integrity and honesty. Contractors should have standards of conduct and internal control systems that:

- (a) Are suitable to the size of the company and the extent of their involvement in Government contracting;
- (b) Promote such standards;
- (c) Facilitate timely discovery and disclosure of improper conduct in connection with Government contracts; and
- (d) Ensure corrective measures are promptly instituted and carried out.

1503.1003 Requirements.

- (a) A contractor's system of management controls should provide for:
 - (1) A written code of business ethics and conduct and an ethics training program for all employees;
 - (2) Periodic reviews of company business practices, procedures, policies and internal controls for compliance with standards of conduct and the special requirements of Government contracting;
 - (3) A mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports;
 - (4) Internal and/or external audits, as appropriate;
 - (5) Disciplinary action for improper conduct;
 - (6) Timely reporting to appropriate Government officials of any suspected or possible violation of law in connection with Government contracts or any other irregularities in connection with such contracts; and
 - (7) Full cooperation with any Government agencies responsible for either investigation or corrective actions.

(b) Contractors who are awarded an EPA contract of \$1 million or more must display EPA Office of Inspector General Hotline Posters unless the contractor has established an internal reporting mechanism and program as described in paragraph (a) of this section.

1503.1004 Contract clause.

As required by EPAAR 1503.1003(b), the contracting officer shall insert the clause at 1552.203-71, *Display of EPA Office of Inspector General Hotline Poster*, in all contracts valued at \$1,000,000 or more, including all contract options.

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. The authority citation for part 1552 is revised to read as follows:

Authority: 5 U.S.C. 301 and 41 U.S.C. 418b.

3. Revise section 1552.203-70 to read as follows:

1552.203-70 Current/former agency employee involvement certification.

As prescribed in 1503.670, insert the following provision in all EPA solicitations for sole-source acquisitions.

CURRENT/FORMER AGENCY EMPLOYEE INVOLVEMENT CERTIFICATION ([insert MONTH YEAR 60 days after date of publication in the Federal Register])

The offeror (quoter) hereby certifies that:

(a) He/She is [] is not [] a former employee or special government employee whose EPA employment terminated within one year prior to submission of this offer (quote).

(b) He/She does [] does not [] employ or propose to employ a current/former employee or special government employee whose EPA employment terminated within one year prior to submission of this offer (quote) and who has been or will be involved, directly or indirectly, in developing or negotiating this offer (quote) for the offeror (quoter), or in the management, administration or performance of any contract resulting from this offer (quote).

(c) He/She does ☐ does not ☐ employ or propose to employ as a consultant or subcontractor under any contract resulting from this offer (quote) a current/former employee or special government employee whose EPA employment terminated within one year prior to submission of this offer (quote).

(d) A former employee or special government employee whose EPA employment terminated within one year prior to submission of this offer (quote) or such former employee's spouse or minor child does ☐ does not ☐ own or substantially own or control the offeror's (quoter's) firm.

(e) See EPAAR part 1503.600-71 for definitions of the terms “employee” and “special government employee.”

(End of provision)

4. Revise section 1552.203-71 to read as follows:

1552.203-71 Display of EPA Office of Inspector General Hotline poster.

As prescribed in 1503.1004, insert the following clause in all contracts valued at \$1,000,000 or more including all contract options.

DISPLAY OF EPA OFFICE OF INSPECTOR GENERAL HOTLINE POSTER ([insert MONTH YEAR 60 days after date of publication in the Federal Register])

(a) For EPA contracts valued at \$1,000,000 or more including all contract options, the contractor shall prominently display EPA Office of Inspector General Hotline posters in contractor facilities where the work is performed under the contract.

(b) Office of Inspector General hotline posters may be obtained from the EPA Office of Inspector General, ATTN: OIG Hotline (2443), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, or by accessing the OIG website at: <http://www.epa.gov/oig/hotline.html>.

(c) The Contractor need not comply with paragraph (a) of this clause if it has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and has provided instructions that encourage employees to make such reports.

(End of clause)

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